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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AMY T.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D041463

(San Diego County
Super. Ct. No. NJ11553A/B/C)

PROCEEDINGS seeking extraordinary relief after reference to a Welfare and Institutions Code section 366.26 hearing. Michael J. Imhoff, Judge. Petition denied.

Andrew, Ashley and Anthony were taken into protective custody after their mother Amy T. (Amy or the mother) used crystal methamphetamine to excess, left them

in the care of a known drug user and maintained the home in an unsafe and unsanitary condition. Amy seeks review of the juvenile court order at the 12-month review hearing terminating her reunification services and setting a Welfare and Institutions Code¹ section 366.26 hearing. She contends the juvenile court abused its discretion by not continuing reunification services under section 352. We deny the petition.

BACKGROUND

In April 1999 the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions for five-year-old Andrew and two-year-old Ashley after they were found to be in an unsafe and unsanitary home environment in which methamphetamine was within their reach. Amy was arrested on charges of child endangerment and drug trafficking. Following Anthony's birth in August 1999, the Agency filed a petition on his behalf. The juvenile court eventually placed the children with their mother and after two years of providing reunification services terminated jurisdiction.

Less than six months after jurisdiction was terminated, the Agency again took the children into protective custody. Ashley's daycare provider reported that Amy arrived at the facility smelling of alcohol and acting intoxicated. Ashley reported that the mother's roommate, Steve W., physically abused both her and her mother. The home was dirty, the children had poor hygiene and a large door mirror accessible to the children was shattered. The mother admitted that she had Steve W., who she knew used crystal, watch

¹ All statutory references are to the California Welfare and Institutions Code.

her children while she worked and that she personally used methamphetamine. The court declared the children dependants and ordered Amy to comply with the requirements of her case plan which included individual counseling, completion of a parenting class and participation in S.A.R.M.S. Amy requested a psychiatric evaluation, which was ordered, along with any medication prescribed. Amy was later ordered to participate in Dependency Drug Court.

Over the next 15 months Amy struggled with her drug addiction, having short periods of sobriety followed by repeated relapses and non-compliant events with S.A.R.M.S. and drug court. At the 12-month contested hearing, Amy admitted she had relapsed within the last month. Amy further testified she had self-reported her relapse to her treatment program and the drug court.

Amy expressed an interest in participating in individual therapy but did not attend a session until March 2002. The therapist reported Amy was severely depressed and that her depression disabled her from taking steps necessary to regain her children. The therapist further opined Amy needed to be placed in a 24-hour treatment facility and to have a medical evaluation. Amy was referred to County Mental Health and was provided with a 24-hour treatment program when a bed became available. The 12-month status review report indicated Amy was seeing a psychiatrist for medications to stabilize her mood. The psychiatrist reported Amy had tried to hang herself but did not succeed and she was showing signs of "ADHD and Bipolar Disorder." Amy had not been in individual therapy since the last review period although she had expressed an interest in returning to therapy. At trial Amy offered no testimony that she had returned to therapy.

At the 12-month contested hearing, the court found reasonable services had been offered or provided to the mother and return of the children to the custody of the parents would create a substantial risk of detriment. It denied Amy's request that reunification services be extended to the 18-month review date, less than three months away. The court found Amy regularly contacted and visited the children but that she had not demonstrated that she had made significant progress in resolving the issues that led to the children's removal or that she had the capacity and ability to complete the objectives of her treatment plan and provide for the children's safety and protection. The court noted that Amy had made significant progress but that she remained "very vulnerable" to relapse and needed considerably more work on her ability to maintain sobriety. The court concluded Amy would need substantially more time than that available to successfully address the chemical dependency and therapeutic issues so it would be safe to return the children. It therefore concluded there was no substantial probability the children would be returned to their mother by the 18-month date.

The court considered whether *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 (*Elizabeth R.*) applied. It noted that reasonable services had been provided to the mother in the nature of chemical dependency treatment, individual therapy and the support of the agency to stabilize her circumstances and concluded it would not be an appropriate case to exercise its discretion to continue the reunification period. The court terminated reunification services and set a section 366.26 hearing.

Amy seeks review by filing a petition for extraordinary relief. (§ 366.26, subd. (l); Cal. Rules of Court, rule 39.1B.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

The court properly found there was no substantial probability that the children would be returned to Amy's physical custody within the 18-month period. (§ 366.21, subd. (g)(1).) Given Amy's extensive drug history and child neglect and her poor performance during the second dependency proceedings, it was clear she could not reunify within the 18-month period. Amy does not challenge the juvenile court's section 366.21 subdivision (g)(1) determination.

Rather, relying on *Elizabeth R.*, Amy argues the court abused its discretion by not continuing reunification services under section 352. In light of her mental illness preventing her from successfully utilizing services for an extended period of time, her past ability to fulfill the requirements of a reunification plan and the fact she had recently shown insight and honesty in attempting to remain sober, she contends the court should have extended her reunification services six months under section 352. The Agency responds that *Elizabeth R.*'s holding is directly contrary to the best interests of dependant children and should not be followed. In the alternative, it contends *Elizabeth R.* is factually distinguishable and not applicable to this case. Because we agree that *Elizabeth R.* does not apply, it is unnecessary for us to reach the broader question whether *Elizabeth R.* should not be followed in general.

In re Daniel G. (1994) 25 Cal.App.4th 1205, 1213-1217 and *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1776-1778 hold that a juvenile court has discretion to order additional services even beyond the 18-month date if the court determines that reasonable services have not been provided. *Elizabeth R.* extended these holdings to allow a juvenile court to exercise its discretion to continue an 18-month review hearing in order to provide a parent who had been offered reasonable services with six additional months of reunification services. (*In re Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1797-1799.) *Elizabeth R.* involved the "unusual circumstance" where the mother's hospitalization for mental illness compromised her ability to participate in reunification services (having been hospitalized for all but five months of the dependency proceedings) and the mother had an impeccable record of visitation and efforts to comply with the reunification plan. (*Id.* at pp. 1777-1778.) The trial court had been impressed with the mother's progress and optimistic about her ability to maintain her mental health but concluded it had no discretion except to return the children to her immediately or make a reference to a section 366.26 hearing. (*Id.* at p. 1783.) The appellate court concluded that under the "unusual circumstances presented" neither the statutory scheme nor case law stripped the trial court of its discretion to continue the 18-month hearing. (*Id.* at p. 1787.)

Here, the trial court correctly concluded *Elizabeth R.* did not apply. No long-term hospitalization interfered with Amy's ability to participate in her reunification plan and her compliance with that plan was far from impeccable. Rather, throughout the proceedings Amy repeatedly failed to comply with the requirements of her plan regarding substance abuse. Additionally, she did not take drugs prescribed for her psychiatric

condition and did not participate in individual therapy. There is no suggestion in the record that services offered were in anyway deficient. Amy seems to suggest that simply because her psychiatric condition may have made compliance with her plan more difficult, she is entitled to extended services. Taking her argument to its logical conclusion, every parent experiencing psychiatric problems would be entitled to extended services. Such is not the law.

The public policy underlying dependency law requires that reunification services be limited. Children at some point are entitled to come to a place of stability. Between the two proceedings, Amy had received more than three years of services. There is nothing in the record indicating she would have reunified within any foreseeable time even if the court had gone beyond the 18-month date. After two roller coaster rides through neglect, dependency, neglect and a second dependency, any reasonable trial judge could conclude the best interests of the children compelled termination of reunification services. The court did not abuse its discretion by not granting a continuance under section 352.

DISPOSITION

The petition is denied.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

McCONNELL, J.